

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

PAUL EDWARD JOHNSON,

Plaintiff,

vs.

No. CIV 99-1436 BB/LCS

LAWRENCE BARRERAS,

Defendant.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION**

THIS MATTER comes before the Court upon Defendant's Motion to Dismiss, filed January 25, 2000 (*Doc. 10*). For the reasons stated, I propose finding that the motion is well-taken and recommend that it be **granted**.

Proposed Findings

1. On December 10, 1999, Plaintiff filed what appears to be pages 4-12 of this Court's standard Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, and pages 1-3 of a standard Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The Court initially characterized this action as a civil rights complaint in its December 27, 1999 Order (*Doc. 3*). Upon further review, the Court re-characterized the action as a petition for a writ of *habeas corpus* in its January 7, 2000 Order (*Doc. 6*).

2. Defendant filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement on January 25, 2000 (*Doc. 10*). In that motion, Defendant moves to dismiss any claims that might be construed as civil rights claims, as opposed to *habeas corpus* claims.

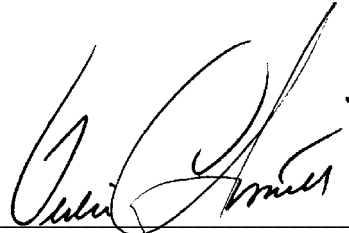
3. Plaintiff has not responded to the Motion, and the applicable time period for a response under local rule D.N.M. LR-Civ. 7.6 has expired. I recommend finding that Plaintiff's failure to respond to the motion constitutes consent to grant the motion. *See* D.N.M. LR-Civ. 7.5 (b).

4. I also recommend finding that Defendant's motion should be granted on its merits. It is difficult to determine whether or not Plaintiff is raising any civil rights claims in what appears to be an incomplete petition for writ of *habeas corpus*. Dismissal of any civil rights claims is appropriate under these circumstances, as Defendant does not have fair notice of the claims brought against him. *See Carpenter v. Williams*, 86 F.3d 1015 (10th Cir. 1996).

#### Recommended Disposition

I recommend that Defendant's Motion to Dismiss be **granted** and that any civil rights claims that might be inferred from the Complaint be **dismissed without prejudice**. Plaintiff's *habeas corpus* claims remain. Timely objections to the foregoing may be made pursuant to 28 U.S.C. §636(b)(1)(C). Within ten days after a party is served with a copy of these proposed findings and recommendations that party may, pursuant to §636(b)(1)(C), file written objections to such proposed findings and recommendations with the Clerk of the United States District Court, 333 Lomas Blvd. NW, Albuquerque, NM 87102. A party must file any objections within the ten day period allowed if that party wants to have appellate review of the proposed findings

and recommendations. If no objections are filed, no appellate review will be allowed.

A handwritten signature in black ink, appearing to read "Leslie C. Smith", written over a horizontal line.

Leslie C. Smith  
UNITED STATES MAGISTRATE JUDGE